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Arkansas Chemical Co. Site, Newark, New Jersey
Proposed Acceptance of Payment

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The purpose of this memorandum is to inform you of a proposed acceptance of payment from the City of Newark for a portion of EPA's response costs for the Arkansas Chemical Co. site and to request that your office review the attached draft Memorandum of Agreement.

The Arkansas Chemical Co. site is a non-NPL site where EPA is currently performing a Removal Action. The Action was initiated in August, 1987, and was expected to cost approximately \$1.9 million; however more recent cost estimates indicate that the total cost might be higher.

Prior to initiation of the federally-funded Removal, on August 10, 1987, Region II issued a unilateral Administrative Order, EPA Index No. II-CERCLA-70103, to Arkansas Chemical Company, Galaxy, Inc. (a real estate holding company established by the principals of Arkansas to hold title to the company's property), and Mark Von Sternberg, a principal of both Arkansas and Galaxy.

Mr. Von Sternberg was given an opportunity to confer and claimed that neither he nor his companies were financially capable of undertaking the necessary work, and that the principal asset of the companies was the site property, which had been acquired by the City of Newark in 1983 for non-payment of taxes. Region II has continued to investigate possible assets of the identified Potentially Responsible Parties (PRPs), and to attempt to identify other PRPs; however, at this time it does not appear likely that the agency will recover any significant portion of EPA's response costs from those PRPs identified to date.

Region II does not consider the City of Newark to be a PRP at this time, pursuant to CERCLA Section 101(20)(D), due to its involuntary acquisition of the property. However, the Region approached the City to determine its position regarding the eventual sale of the property and the disposition of the proceeds. The City's Corporation Counsel explained that the City was very

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anxious to have the property back on the tax roles, and that it considered the site to be valuable commercial property. Corporation Counsel for the City agreed that Newark would be willing to turn over proceeds of the sale of the property to EPA, to reimburse EPA for its Response costs, up to the total amount of those costs.

Subsequent to the Corporation Counsel's agreement in principle to reimburse EPA, the Office of Regional Counsel drafted a Memorandum of Agreement (attached) to be executed by EPA and the City, which calls for payment of the proceeds of any sale of the site property to EPA. Details of draft language were worked out in a meeting held between Region II representatives and the City's Corporation Counsel, Glenn Grant, on January 27, 1988. Any sale will take place after the Removal Action is completed, which is expected to be early this coming summer.

The main points of the proposal and attached Memorandum of Agreement are as follows:

- 1) the City will arrange for the sale of the property either by public auction or "designation pursuant to State statutes" (language requested by Counsel for the City to allow the property to be eligible for a State urban redevelopment program);
- 2) an appraisal of the property will be performed (previous estimates of value have run as high as \$1.0 million);
- 3) the City will not approve a sale of the property without the written approval of EPA;
- 4) the City will reimburse EPA for the entire amount of the sale (the City has agreed to forego their back taxes due, which might amount to \$400,000 with interest);
- 5) EPA does not provide any release as part of the agreement (even though the Region does not consider the City to be a PRP);
- 6) EPA agrees not to place a lien on the property prior to the sale, and agrees only to enter into negotiations with a potential purchaser for a release from past response costs.

Region II feels that execution of the attached agreement would be favorable to the Agency. Since there is little likelihood of recovering any substantial amount of money from the previous site operators and owners, this agreement with the City represents an opportunity for the Agency to recover a significant portion of its response costs. For reasons set forth below, it is the Region's view that the authority to enter into such an agreement has been delegated to the Regional Administrator.

CERCLA §122(h)(1) authorizes the Administrator to "consider, compromise and settle" claims for cost recovery incurred pursuant to CERCLA §104. Under CERCLA §122(h)(1) if the total response costs at a site exceed \$500,000, such a claim may not be compromised without prior DOJ written approval. EPA Delegation No. 14-14-D delegated the above settlement authority to the Regional Administrators. EPA's draft guidance on Administrative Settlements under Sections 122(h)(1) and (g)(4) of CERCLA, dated July 2, 1987, defines "compromise" as "entering into an administrative...agreement...in which EPA recovers less than 100% of its claims for past and projected response costs at that site and provides a covenant not to sue to the settling PRPs for all or part of the remainder of the Agency's total claim..."(Emphasis added.) Since no release or covenant is included in the attached Memorandum of Agreement, under which the City, even though not a PRP, explicitly remains liable for all response costs, DOJ prior approval is not required for execution of the Agreement by the Regional Administrator.

The Region has received every indication that the City will approve the attached Agreement. Despite the fact that the Region regards the execution of the attached Memorandum of Agreement as within the Regional Administrator's delegated authority, the Region would appreciate any comments your office might have since this is a relatively unusual occurrence.

If you have any questions regarding this proposal, please contact William Tucker of my staff at (FTS) 264-3268. Your assistance in this matter is appreciated. We plan to forward this to the City of Newark for execution by June 30, 1988.

Attachment

cc: Lloyd Guerri, OWPE
Carolyn Thompson, OWPE
Lisa Friedman, OGC